IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

OSWALD URBAN NELSON,	
Plaintiff,)
v.) Case No. 3:12-cv-0795
LOIS M. DeBERRY SPECIAL NEEDS FACILITY, et al.,)) Judge Campbell)
Defendants.)

ORDER

The complaint in this action was filed in July 2012 along with an application to proceed *in forma pauperis*. The Court denied the plaintiff's application to proceed as a pauper on the basis that there were sufficient funds in the plaintiff's prison trust-fund account to cover the \$350.00 filing fee. The Court therefore directed the plaintiff to remit the entire fee. The Court took notice in the same order that the plaintiff had already submitted a partial payment of \$130.00 toward the filing fee in another case filed around the same time, *Nelson v. DeBerry Special Needs Facility*, No. 3:12-cv-0814, but that the plaintiff's trust account statement revealed that there were still sufficient funds in his account, even after that payment, with which to pay the full \$350.00 filing fee in this case.

Thereafter, the plaintiff submitted \$220.00 which he apparently intended to be applied toward this case, and it is unclear whether he also believed the original \$130.00 payment had also been credited toward the filing fee in this case. In any event, as a result of clerical issues and some ambiguity regarding the plaintiff's wishes, neither payment was credited toward the filing fee in this case. As a result, by order entered on October 12, 2012, this action was dismissed for failure to comply with the Court's order and for want of prosecution.

The plaintiff subsequently attempted to have his case re-opened by letters to this Court and through an appeal to the Sixth Circuit Court of Appeals, but the appeal was dismissed as untimely. Nonetheless, the Court has now determined that, if the funds received in the Clerk's Office had been credited in accordance with the plaintiff's intent, this action would not have been dismissed for failure to comply with the Court's order.

Accordingly, the Order dismissing this case (ECF No. 9) is hereby VACATED, and this action is

REINSTATED on the active docket.

Pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B), this action is **REFERRED** to the Magistrate Judge to

conduct an initial review of the complaint and, if appropriate, to direct service of process, and thereafter to

enter a case management order, to render decisions on all pre-trial, non-dispositive motions, to issue a Report

and Recommendation on all dispositive motions, and to conduct any other necessary proceedings pursuant

to Rule 72(b), Fed. R. Civ. P., and the Local Rules of Court.

Finally, in order to avoid even the appearance of impropriety or bias, I hereby RECUSE myself from

further involvement in this matter.

It is so **ORDERED**.

Todal Carpbell

United States District Judge